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**PETITION UNDER 28 USC § 2225 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

UNITED STATES DISTRICT COURT

District

NORHTERN DISTRICT OF ILLINOIS

Name of Movant

LEOBARDO RIOS

Prisoner No.

18809-424

Case No.

01-CR-1143

Place of Confinement

Federal Correctional Institution, Terre Haute, Indiana 47808

UNITED STATES OF AMERICA

V.

LEOBARDO RIOS

(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack

United States District Court Northern District of Illinois

2. Date of judgment of conviction
- May 30, 2007

3. Length of sentence
- 121 Months, or [10.1] years imprisonment

4. Nature of offenses involved (all counts)
- Two(2) counts: Count one(1) 841(a)(1)
-
- and count two(2) 922(g)(1).

5. What was your plea? (Check one)

(a) Not guilty



(b) Guilty



(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/AN/AN/AN/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury



(b) Judge only



7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

FILED

AUG 12 2008
AUG 12 2008MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

08CV4555

JUDGE CASTILLO

MAGISTRATE JUDGE NOLAN

9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeals for the Seventh Cir

(b) Result Dismissed

(c) Date of result May 2, 2008

10. Other than a direct appeal from the judgement of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgement in any federal court?

Yes ☐

No ☒

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

N/A

N/A

N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐

No ☒

(5) Result N/A

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

N/A

N/A

N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐

No ☒

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐

No ☒

(2) Second petition, etc. Yes ☐

No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Just came out of the Appeals Court

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Movant was constructively denied the effective assistance of counsel, because of failure to file dismissal
 Supporting FACTS (state *briefly* without citing cases or law) Movant was denied the rights to effective assistance of counsel, because counsel failure to file a motion to dismiss the indictment on the grounds that the statute of limitation been tolling over, and under the statute of limitation of five years pursuant to 18 U.S.C §3282. which deny movant his Fifth/Sixth

B. Ground two: Defense counsel rendered ineffective assistance of Counsel for failure to file a motion to dismiss the indictment under the Speedy Trial Act §3161.
 Supporting FACTS (state *briefly* without citing cases or law) Defense Counsel faile to move for dismissal under 18 U.S.C §3161, 3162, and 922(g)(1), § 841(a)(1) counts that was filed more than five years before movant was arrest. In this case movant did-not wave his right to a speedy trial, which the the Speedy Trial Act imposes a time limit on the Government to try Movant.

C. Ground three: Defense counsel was rendered ineffective at the innocene phase
 Supporting FACTS (state *briefly* without citing cases or law) Movant assert that his counsel was deficient during the innocene phase under Two(2) categories; (1) Attorney's adoption of the time/prox

imity defense was unreasonably deficient; and (2) Attorney's
performance at the sentencing trial was unreasonably defic-
ient (3) Attorney's failure to investigate adequately./

- D. Ground four: Movant received Ineffective Assistance of Counsel
at the punishment phase by failure to present mitigation
 Supporting FACTS (state briefly without citing cases or law) Movant assert that
he received a counsel that was ineffective during the penalty
phase demonstrated a failure to investigate, and make the
preparations for sentencing/trial. Movant has shown that his
counsel performance was deficient, and the deficient
performance prejudiced him which violates Strickland.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

N/A

N/A

N/A

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Kent R. Carlson, 53 W. Jackson Blvd
Suite #1544, Chicago, Illinois 60604

(b) At arraignment and plea Same as Above

(c) At trial Same as Above

(d) At sentencing Same as Above

(e) On appeal Same as Above

(f) In any post-conviction proceeding N/A

N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐

No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐

No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

N/A

N/A

(b) Give date and length of the above sentence: N/A

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐

No ☒

Wherefore, movant prays that the court grant petitioner relief to which he or she may be entitled in this proceeding.

Leobardo Rios
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7-1-08

(Date)

Leobardo Rios
Signature of Movant